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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91204473
Party	Defendant Edmund Frette S.A.R.L.
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Date	07/02/2012
Attachments	91204473-Motion.pdf ( 5 pages )(170738 bytes )



Preliminarily, Opposer includes no reference to itself other than its name in the caption of the Notice of Opposition. Opposer sets forth neither its business entity type nor under what State's laws Opposer is organized. Further, the authority of the signatory listed on the Notice of Opposition is not clear as it is signed as follows: "Matt Fogarty, MD Representative for Opposer." As noted in Applicant's June 6, 2012 Motion to Extend Time, Applicant's counsel is not certain who they may properly contact as representing Opposer in this case. Applicant believes Opposer is required to establish who Opposer is and the authority of the signatory to represent Opposer under Patent and Trademark Office Rule 11.14(a) or (e) before the Notice of Opposition goes forward.

Regarding Opposer's claims, Opposer asserted it has rights in "other marks" for what Opposer references as Opposer's "wide variety of goods and Services," "apparel and other items," "variety of goods and Services," "goods and Services," "apparel and other goods," and "goods, Services or licensed products." See, for example, Paragraphs 1, 2, 3, 4, 5, 8, 11, and 12. These phrases are vague and ambiguous, and do not give Applicant fair notice and do not provide sufficient detail of the marks and the goods/services on which Opposer is asserting it has rights. In addition, in Paragraph 8, Opposer asserted rights to "a natural zone of expansion for Opposer and such goods and Services." Inasmuch as the specific marks and the specific goods and services being claimed by Opposer are not clear, Opposer's claim of "a natural zone of expansion" is likewise unclear.

Opposer claimed ownership of four marks in relation to Opposer's asserted applications/registrations (and possible common law claims); and Opposer also asserted use, the renown of Opposer's marks (the four specified marks or the "other marks"), the fame of Opposer's marks "long prior" to the acquisition of any rights by Applicant in its mark, and

Opposer's asserted claims of likelihood of confusion and dilution. See, for example, Paragraphs 2, 3, 4, 5, and 15.<sup>2</sup>

In Paragraphs 2, 3 and 4 Petitioner asserts ownership of applications/registrations for and "plans to use or has used" the marks FRATTY, FRATTY FOGARTY, HOOD PREP and SOUTHERN BEAU. However, the Notice of Opposition does not set forth the asserted use and prior use, as well as the asserted renown of these marks separately. In view of the nature of Opposer's claims, particularly relating to the marks HOOD PREP and SOUTHERN BEAU vis-à-vis Respondent's mark EDMOND FRETTE, Applicant believes fair notice requires the specific information be clearly pleaded.

The Notice of Opposition pleading is vague and ambiguous, and does not give Applicant fair notice and does not provide sufficient detail of the marks, and goods and/or services on which Opposer is asserting it has rights.

Based on the foregoing, Applicant cannot reasonably prepare a response to Opposer's current Notice of Opposition.

Applicant requests that the Board require Opposer fully identify its legal business entity and fully explain the basis for Matt Fogarty to represent Opposer before the Board; and that Opposer be required to properly plead its business entity and the specific state under the laws of which Opposer is organized, specify the marks in which Opposer is asserting rights; the specific

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<sup>2</sup> Applicant believes that Opposer's claim of dilution (Paragraphs 13, 14, 15, 16 and 17) is legally insufficient because it does not include an allegation of when each of Opposer's asserted marks (currently unclear) became famous, leaving Applicant without fair notice. The Board discussed the requirements for a proper pleading of dilution under Sections 13(a) and 43(c) of the Trademark Act, 15 USC §§1063(a) and 1125(c), in *Polaris Industries Inc. v. DC Comics*, 59 USPQ2d 1798 (TTAB 2000). If the Board agrees, Applicant respectfully requests that Opposer be so advised and the dilution claim be dismissed absent a properly pleaded claim of dilution in Opposer's more definite amended pleading.

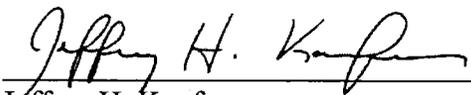
goods and services for which Opposer is asserting rights for each of its marks, the asserted specific use dates for the claims relating to each of its marks, the asserted dates its marks became “famous” for each of its marks, and any common law rights Opposer is asserting.

Applicant also requests the Board suspend this proceeding until the pleadings are complete as explained in TBMP §505.02 (Third Edition 2011).

In view of the foregoing, Edmund Frette S.A.R.L., Applicant, respectfully requests that its Motion For a More Definite Statement under Rule 12(e), Fed.R.Civ.P. and to Suspend, be granted, that the Board order Opposer to file a more definite amended pleading, Applicant’s time to file an Answer or other response thereto be extended appropriately; and that proceedings in this opposition proceeding be suspended pending completion of the pleadings.

Respectfully submitted,

EDMUND FRETTE S.A.R.L.

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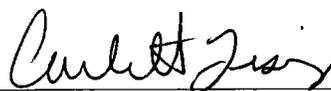
Date: July 2, 2012

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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing MOTION FOR A MORE DEFINITE STATEMENT PURSUANT TO FED. R. CIV. P. 12(e), and MOTION TO SUSPEND was served on Applicant at the address listed in the records of the Trademark Trial and Appeal Board, this day 2nd day of July, 2012, by sending same via First Class mail, postage prepaid, to:

Matt Fogarty MD  
Pickin' Cotton Communications LLC  
232 Ivory Street  
Lafayette, LA 70506

  
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